

Message Text

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ACTION COA-02

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AID-20 TRSE-00 DOTE-00 EA-11 H-03 CIAE-00 DODE-00

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FM AMCONSUL GUAYAQUIL

TO SECSTATE WASHDC IMMEDIATE 3269

INFO AMEMBASSY QUITO

C O N F I D E N T I A L GUAYAQUIL 648

E.O. 11652: GDS

TABS: CASC, EFIS, EC

SUBJ: B&B FISHERIES INTERNATIONAL ATTEMPTS UNILATERALLY
BREAK ASSOCIATION CONTRACT WITH EPNA

REF: A. STATE 12707; B. QUITO 4016

1. JUNE 17 CONSUL GENERAL ACCOMPANIED BY EMBOFF CALLED ON VICENTE TAMARIZ, MANAGER OF EPNA. SAME DAY COMMERCIAL OFFICER HAD LENGTHY INTERVIEW WITH B&B FISHERIES INTERNATIONAL (BBFI) LEGAL REP SEMINARIO AND RECEIVED PHONE CALL FROM OFI ATTORNEY ROBERT ELY IN ALASKA. (CONGEN ALSO RECEIVED PHONE CALL FROM DEL MONTE MANAGER IN MANTA RE BBFI PROBLEM.) DESCRIPTION SITUATION BASED THESE CONTACTS FOLLOWS.

2. ON 12 JUNE BIX BONNEY, PRESIDENT BBFI, SENT TELEX MESSAGE TO TAMARIZ, DESCRIBING IT AS "NOTICE OF TERMINATION" OF CONTRACT BETWEEN SAID PARTIES DATED NOV. 1973 AS AMENDED MAY 1974. IN MESSAGE BONNEY BLAMED DECISION ON UNFORESEEN REQUIREMENTS GOE DOCUMENTATION AND LACK OF SOURCES OF FUEL. HE ASKED TAMARIZ TO PAY OFF ALL BBFI OBLIGATIONS DRAWING ON \$20,000 LETTER OF CREDIT DESPOSITED BY BBFI IN BANK OF AMERICA'S GUAYAQUIL BRANCH AS GUARANTEE UNDER CONTRACT AND TO SEND BALANCE TO HIM. FINALLY, HE REQUESTED TAMARIZ TO
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DIRECT BBFI'S TWO U.S. FLAG FISHING BOATS TO "NEAREST U.S. PORT

IMMEDIATELY".

3. BONNEY'S MESSAGE BASED ON FALSE PREMISES AND UNDERSTANDABLY CAUSED CONSTERNATION ON PART OF TAMARIZ AND SEMINARIO. FIRST, BONNEY HIMSELF HAS NO LEGAL STATUS IN ECUADOR AND ANY NEGOTIATION UNDER CONTRACT MUST BE DONE BY LEGAL REP SEMINARIO. SECOND, PRETENSES CITED FOR TERMINATION SEEM TO BE JUST THAT-PRETENSES. ALL SIGNIFICANT DELAYS IN COMMENCING OPERATIONS CAUSED BY NEED TO RE-OUTFIT BBFI'S BOATS. REAL MOTIVE, CONFIRMED BY ELY, IS THAT BBFI SHORT ON FUNDS AND BANKS FORECLOSING ON NONPRODUCTIVE BOATS. THIRD, IN EVENT OF TERMINATION, CONTRACT CLAUSE RE \$20,000 DEPOSIT MAY WELL BE INTERPRETED AS PENALTY RATHER THAN LIQUIDATION CLAUSE. FORTH, CONTRACT HAS NO PROVISION FOR UNILATERAL TERMINATION. FINALLY, GOE MARITIME AUTHORITIES NOT ABOUT TO RELEASE BOATS FROM PORT OF MANTA UNTIL ALL MATTERS RE CONTRACT AND ACCOUNTS PAYABLE TO SUPPLIERS AND CREW CLEARED UP. ONLY \$300 LEFT IN LOCAL BBFI ACCOUNT HERE CONTROLLED BY SEMINARIO, WHICH FAR SHORT OF OUTSTANDING ACCOUNTS PAYABLE.

4. TWO BBFI BOATS FINALLY DEPARTED MANTA FOR GALAPAGOS APPROX. 3 WEEKS AGO AFTER SOME MONTHS OF DELAYS IN OUTFITTING. THEY GOT LOST AT LEASJAONCE ON THE WAY AND APPARENTLY HAD NOT BEGUN SERIOUS FISHING OPERATIONS BY TIME THEY RECEIVED CEASE AND DESIST ORDER FOR BONNEY VIA RADIO LAST WEEK. THUS TECHNICALLY 6-MONTH TERM OF CONTRACT, WHICH WAS TO BEGIN UPON DATE OF "INITIATION OF FISHING OPERATIONS" ACCOMPANIED BY EXECUTION OF SEPARATE WRITTEN CERTIFICATION TO THAT EFFECT, HAS NOT YET BEGUN. BOATS RETURNED MANTA 16 JUNE. FOUR USCITY CREW MEMBERS ARE STAYING WITH BOATS AWAITING DEVELOPMENTS AND HAVE SUFFICIENT PROVISIONS AND FUNDS FOR SUBSISTENCE.

5. BBFI IS CORPORATION REGISTERED IN PANAMA. IT IS AFFILIATED WITH B&B FISHERIES OF ALASKA, BUT BBFI CONTROLLED BY BONNEY & ELY WHILE MAJORITY STOCK PARENT COMPANY APPARENTLY OWNED BY JAPANESE FIRM TAIYO FISHERY CO., INC., TOKYO. TAIYO MADE STUDY OF ECUADOREAN VENTURE AND DECIDED NOT TO BANKROLL IT. CONSEQUENTLY, BBFI IS NOMINAL ENTITY WITH NO ASSETS TO SPEAK OF.

6. WHEN INFORMED BY COMMERICAL OFFICER THAT SITUATION MORE COMPLEX AND SERIOUS THAN IMPLIED BY BONNEY'S TELEX, ELY PROMISED TO TRY TO CONFIDENTIAL

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COME TO GUAYAQUIL; HIS ARRIVAL SINCE CONFIRMED FOR 20 JUNE AM. THIS NEWS GREETED WITH RELIEF BY SEMINARIO, WHO SEES HIS OWN BUSINESS AND REPUTATION THREATENED BY BONNEY'S ACTION.

7. COMMENT. SEMINARIO, WHO SEEMS TO BE INTELLIGENT, SERIOUS BUSINESS-MAN, BELIEVES THAT RENEGOTIATION WITH ADVANTAGES TO BOTH PARTIES IS POSSIBLE. WE FEEL THAT BBFI SHOULD BE ENCOURAGED AT LEAST TO MAKE THE ATTEMPT, AS COLLAPSE THIS AGREEMENT MAY MAKE GOE (AND POSSIBLY

U.S. TUNA INTERESTS) GUN SHY AND THEREFORE COMPLICATE FUTURE NEGOTIATIONS OF ADDITIONAL AGREEMENTS REGARDLESS OF STRUCTURE OR PURPOSE. DEPARTMENT SHOULD BEAR IN MIND THESE FACTORS: (A) CONTRACT WAS SIGNED BY MINNATURAL RESOURCES JARRIN IN HIS CAPACITY PRESIDENT BOARD OF DIRECTORS EPNA AND HIS SUBSECRETARY RIVADENEIRA HAS DEFENDED AGREEMENT PUBLICLY AGAINST DOMESTIC POLITICAL CRITICISM; (B) AT THIS POINT, WE BELIEVE THESE GOE OFFICIALS WOULD PREFER DEVISING MEANS OF SAVING CONTRACT TO VINDICATE THEIR OWN JUDGEMENT. TAMARIZ GAVE IMPRESSION HE WANTS TO SALVAGE CONTRACT AND DEL MONTE SOURCE CLAIMS RIVADENEIRA TOLD HIM JUNE 14 THAT HE SEEKING WAY TO MAKE CONTRACT WORK. IT APPEARS THAT ONE ALTERNATIVE SOUGHT BY GOE OFFICIALS AND SEMINARIO IS TO RENEGOTIATE CONTRACT TO AUTHORIZE FISHING OFF MANTA INSTEAD OF IN GALAPAGOS REGION. (C) BANK OF AMERICA MANAGER TESSL US THAT IF EPNA BOARD OF DIRECTORS, HEADED BY MINNATURAL RESOURCES JARRIN, REQUESTS \$20,000 ON DEPOSIT HE WILL COMPLY. (D) ONE PROVISION OF CONTRACT IS B&B FISHERIES EXPRESSLY RENOUNCED ANY CLAIM ACTION BY "DIPLOMATIC CHANNELS" (CALVO CLAUSE).

8. IN VIEW OF THE ABOVE WE RECOMMEND THAT DEPARTMENT CONSIDER CONTACTING BONNEY TO POINT OUT TO HIM (A) WEAKNESS OF HIS LEGAL POSITION AND (B) IMPORTANCE TO ALL PARTIES CONCERNED WHICH CONTRACT HAS AS A PRECEDENT. WE WOULD HOPE THAT BONNEY'S BANKERS COULD BE PUT OFF ON THE SAME BASIS AT LEAST UNTIL ELY' S RETURN TO THE U.S. EMBASSY CONCURS IN THIS RECOMMENDATION.

9. POST ALSO WISHES TO BE ADVISED REGARDING THE EXTENT OF ITS OBLIGATION TO INTERVENE IN PROTECTION OF BBFI FINANCIAL INTEREST -- AS DISTINCT FROM OBVIOUS POLITICAL CONFIDENTIAL

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INTERESTS AND PROTECTION OF AMCITS STRANDED IN MANTA -- IN VIEW BBFI'S DOMICILE IN PANAMA AND POSSIBLE RELATIONSHIP WITH TAIYO. DEWITT

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